IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.10.2006

Coram:

The Honourable Mr.A.P.SHAH, CHIEF JUSTICE
and
The Honourable Mr.Justice K.CHANDRU

Writ Appeal No. 1250 of 2006

M/s.Sree Murugan Engineering Products
Rep. by its Partner A.Muruganandham,
No.201, Dr.Nanjappa Road,
Coimbatore. .... Appellant
(Petitioner in
WP 25001/2006)

Vs.

The Commercial Tax Officer,
Dr.Nanjappa Road Circle,
Coimbatore. .... Respondent
(Respondent in -do-)

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 9.8.2006 passed in W.P.No.25001 of 2006 presented under Article 226 of the constitution of India to issue a writ of Certiorari calling for the records on the file of the respondent herein in his proceedings in TNGST No.2140614/2003-2004 dt. 30.6.2006 and quash the same.

For Appellant :::: Mr.A.L.Somayaji, Senior Counsel
For Mrs.R.Hemalatha

For Respondent :::: Mr.Haja Nazirudeen
Special Government Pleader (T)

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J U D G M E N T

(The Judgment of the Court was delivered by Hon'ble The Chief Justice)

Admit. Learned Special Government Pleader appearing for the respondent waives service. By consent, the writ appeal is taken up for hearing.

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2. The appellant/assessee is a dealer in machinery spares. For the assessment year 2003-2004, the appellant has reported a total and taxable turnover of Rs.73,88,596/- and Rs.73,69,588/- by filing Form A1 under the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as 'the Act'). The appellant's accounts were called for by the assessing authority for scrutiny. Though the assessing authority has accepted the turnover reported by the appellant and also mentioned that the purchases were covered by proper bills, yet, rejected the turnover relating to concessional rate of tax against Form XVII on a turnover of Rs.5,78,734/- and assessed at 12% on the ground that the purchasers have not purchased the goods for the use in manufacture of other goods as either raw materials or consumables. Consequently, the assessing authority assessed the tax at Rs.62,263/- and imposed penalty of Rs.42,907/- under Section 12(3)(b) of the Act. The order of the assessing authority was challenged by the appellant in a writ petition on the ground that a turnover in a sum of Rs.14,85,636/- in respect of sale is covered by Form XVII. As the purchasing dealer has contravened the condition of Form XVII, tax and penalty could be imposed in respect of that turnover only against the purchasing dealer and not against the appellant, who is the selling dealer, as per Section 3 (3) of the Act.

3. Before the learned single Judge, in support of his submission, the appellant placed reliance on the decision of a Division Bench of this Court in State of Tamil Nadu v. Madras Petro Chem Ltd., (89 STC 438), an unreported order of a Division Bench of this Court dated 4.12.2001 rendered in Writ Petition No.10610 of 2000 (State of Tamil Nadu v. Seema Udyog) and also an order made by a learned single Judge of this Court in Writ Petition No.7753 of 2006 dated 21.3.2006 (M/s.Screenwell India v, DTCO). The learned single Judge, however, held that the decisions relied upon by the appellant are no longer good law as Section 3(3) of the Act has been considerably amended and further more, Section 10, which provides for burden of proof on the dealer, who claims that he is not liable to pay tax, has not been taken up for consideration. The other important factor, according to the learned single Judge is that sub-clause (3) has been introduced to Section 10 by Amendment Act 60/1997 with effect from 6.11.1997 which provides that, 'where any dealer knowingly produces a false bill, vouchers, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him is not liable to be taxed or liable to be taxed at a lower rate, the assessing authority shall on detecting such production direct the dealer producing such document to pay as penalty a sum - (i) which shall be in the case of first such detection fifty percent of the tax due in respect of such transaction; and (ii) which shall be in the case of second or subsequent detections one hundred percent of the tax due in respect of such transaction.' This piece of statutory provision has not been taken into consideration in any one of the judgments. At the time of rendering of the judgment of the Division

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Bench, sub-clause (3) was not incorporated in the section, and the earlier portion of the provisions which was in the statute book has not been agitated before the Court. The learned single Judge further observed that the assessment order is amenable to appellate provision provided under the Act and therefore, dismissed the writ petition with liberty to the appellant to file a statutory appeal as provided under the Act.

4. Having heard the learned counsel appearing for both sides, we are unable to agree with the view expressed by the learned single Judge. Section 3(3) levies concessional rate of three per cent on the sale of industrial raw materials to a manufacturing dealer for use in the manufacture of goods, except in the manufacture of alcohols and other goods mentioned therein. Sub-Section (3) inter alia provides as follows: -

> "Notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), the tax payable by a dealer in respect of sale of any goods including consumables, packing material and labels, but excluding plant and machinery, to another dealer for use by the latter in the manufacture and assembling, packing or labeling in connection with such manufacture inside the State, for sale by him of any goods other than ethyl alcohol, absolute alcohol, methyl alcohol, rectified spirit, neutral spirit and denatured spirit, goods falling under Part A of the Third Schedule, goods falling under item 1 of the Sixth Schedule and arrack shall be at the rate of only three per cent on the turnover relating to such sale:
>
> Provided that the provisions of this sub-section shall not apply to: -
>
> (a) any sale of (high speed diesel oil, light diesel oil and molasses; and
>
> (b) any sale, unless the dealer selling such goods furnishes to the assessing authority in the prescribed manner and within the prescribed period, a declaration duly filled in and signed by the dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority.
>
> Provided further that any dealer who after purchasing the goods in respect of which he had furnished any declaration, fails to make use of the goods so purchased for the purpose specified in the declaration but disposes of such goods in

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any other manner, shall pay the difference of tax payable on the turnover relating to such goods at the rate prescribed and three percent:

Provided also that the dealer purchasing the goods maintains a separate stock account for each of the goods purchased by him showing such particulars as may be prescribed."

On a plain reading of this Section, it is seen that concessional rate is subject to the production of Form XVII by the selling dealer obtained by him from the manufacturing dealer as prescribed in Rule 22. The concessional rate is not admissible for the sales of high speed diesel oil, light diesel oil and molasses to the manufacturer. By the introduction of second proviso, the Legislature had taken care of any wrong declaration by the purchasing dealer by making the purchasing dealer liable for the difference of tax payable on the turnover relating to the sale of such goods at the rate prescribed in the First Schedule and four per cent. In other words, the selling dealer is not made liable for the wrong declaration by the purchasing dealer.

5. A similar provision of the Madras General Sales Tax Act, 1959 fell for consideration before a Division Bench of this Court in the case of Premier Electro Mechanical Fabricators, Madras v. State of Madras, (1968 Vol.22 STC 269) where Veeraswami, J (as he then was) speaking for the Bench held that under Section 3(3) of the Madras General Sales Tax Act, 1959, a dealer is entitled to the concessional rate of tax as a matter of right, provided he satisfies the requisites of that sub-section. The requisites are threefold: (1) The goods, which are the subject matter of sale, should be those mentioned in the First Schedule, (2) the sale must be to another dealer, and (3) the goods sold should be for the use by the purchaser as component parts of any other goods mentioned in the First Schedule, which he intends to manufacture inside the State for sale. The manner in which the seller has to satisfy the third requisite is as provided in the proviso to the sub-section, namely, production of the declaration in the prescribed form. Once that is done, there is no further obligation on the part of the selling dealer and he will automatically be entitled to the concessional rate. If the declaration turns out to be false, in the sense that the goods purchased have not been used as declared in the prescribed form, the purchaser is exposed to the penalties provided by Section 23 and Section 45(2)(e). But on that account, the selling dealer is not deprived of the concessional rate.

6. In *State of Tamil Nadu v. Madras Petro Chem Ltd., (cited supra)*, a Division Bench of this Court (Dr.A.S.Anand, C.J and Kanakaraj, J.) considered the various amendments effected to Section 3(3) of the Act and held as follows: -

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> " The legislative history of Section 3 of the Tamil Nadu General Sales Tax Act, 1959 (under sub-section (3) of which a dealer selling goods to another for use by the latter as component parts in the manufacture of other goods for sale in the State is entitled to be taxed at a concessional rate on the strength of declarations in Form XVII given by the purchasing dealer), shows that the Legislature had taken care of any wrong declaration by the purchasing dealer by making the purchasing dealer liable for the difference of tax payable on the turnover relating to the sale of such goods at the rate prescribed in the First Schedule and 4 per cent. In other words, the selling dealer is not made liable for the wrong declaration by the purchasing dealer. Once the selling dealer produces the declaration in the prescribed form, there is no further obligation on the part of the selling dealer and he will automatically be entitled to the concessional rate. If the declaration turn out to be false, in the sense that the goods purchased have not been used as declared in the prescribed form, the purchaser is exposed to the penalties provided by Section 23 and Section 45(2)(e) of the Act."

7. This issue was again considered in State of Tamil Nadu v. Seema Udyog (cited supra) in the context of the amended provisions of Section 3(3) of the Act by the Bench comprising of Justice R.Jayasimha Babu and Justice A.K.Rajan and the Bench, following the decision of a three Judge Bench of the Supreme Court in State of Madras v. Radio and Electricals Ltd., (18 STC 222), held that the duty of the seller who received such a declaration, therefore, is continued to make sure that the declaration has been duly filled in and signed by the purchaser/dealer and that the Form given to the seller is the one prescribed and obtained from the prescribed authority. The duty of the seller ends there. He is under no further obligation to enquire into whether the buyer is engaged in a process or manufacture and if so, whether the article purchased from the seller are to be put to use as the component part or the product manufactured by the buyer.

8. In State of Madras v. Radio and Electricals Ltd., (cited supra) similar provisions of the Central Sales Tax Act have been construed by the Supreme Court, and it has been held as follows: -

> "We are of the opinion that whether or not the goods were in fact used for the stated purpose or even usable for such a purpose, so long as the purchasing dealer has furnished the required declaration to the

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selling dealer, the selling dealer becomes under law entitled to the benefit of Section 8(1) of the Act. It is no function of the selling dealer to enter into a judicial examination of whether the goods are in fact used or usable for the manufacture or processing of goods for sale by the purchasing dealer. The purchasing dealer declares that they are required for such a purpose and are further so specified in his form of registration granted by the sales tax authorities. It is not the function of the selling dealer to enquire whether the requirement of the purchasing dealer is bona fide or even is or is not within the certificate of registration of that dealer."

9. Again in Chunni Lal Parshai Lal v. Commissioner of Sales Tax, U.P (1986) 62 STC 112 (SC), it has been observed as follows: -

> " The purpose for the making of the rule would, however, be frustrated if after the dealer proves in the manner indicated in Rule 12-A he has to prove again how the purchasing dealer has dealt with the goods after he obtains the certificate from a registered dealer. That would make the working of the Act and rule unworkable."

On the question of liability of the seller, the Supreme Court in its judgment at pages 120 and 121 held as follows:-

> "This Court observed that indisputably the seller could have in these transactions no control over the purchaser. He had to rely upon the representation made to him. He must satisfy himself that the purchaser was a registered dealer, and the goods purchased were specified in his certificate but his duty extended no further. If he was satisfied on these two matters on a representation made to him in the manner prescribed by the rules and the representation was recorded in the certificate in form C, the selling dealer was under no further obligation to see to the application of the goods for the purpose for which it was represented that the goods were intended to be used. If the purchasing dealer misapplied the goods he incurred a penalty under Section 10 of the Act. That penalty was incurred by the purchasing dealer and could not be visited upon the selling dealer. The selling dealer was under the Act authorized to collect from the purchasing dealer the amount payable by him as tax on the transaction, and he could collect that amount only in the light of the declaration mentioned in the certificate in form C. ……

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> ……There was nothing in the Act and the Rules that for infraction of the law committed by the purchasing dealer by misapplication of the goods after he purchased them, or for any fraudulent misrepresentation by him, penalty might be visited upon the selling dealer. This Court further observed that if the purchasing dealer held a valid certificate specifying the goods which were to be purchased and furnished the required declaration to the selling dealer, the selling dealer became, on production of the certificate, entitled to the benefit of Section 8(1) of that Act. .……
> ……
> …… We are of the opinion that his submission has to be accepted. After all the purpose of the rule was to make the object of the provisions of the Act workable, i.e., realization of tax at one single point, at the point of sale to the consumer. The provisions of the rule should be so read as to facilitate the working out of the object of the rule. An interpretation which will make the provisions of the Act effective and implement the purpose of the Act should be preferred when possible without doing violence to the language. The genuineness of the certificate and declaration may be examined by the taxing authority but not the correctness or the truthfulness of the statements. The sales tax authorities can examine whether certificate is 'farzi' or not, or if there was any collusion on the part of selling dealer - but not beyond - i.e., how the purchasing dealer has dealt with the goods."

10. In Writ Appeal No.994 of 2006 and W.P.No.22331/2006 (M/s.Maruthi Handling Equipments v. The Deputy Commercial Tax Officer decided on 10.8.2006) following the earlier decisions of this Court and the Supreme Court, this Bench has categorically held that how the purchasing dealer has dealt with the goods is not the concern of the seller and liability can be fastened only upon the purchasing dealer and not the seller.

11. The provisions of Section 10(3) of the Act relied upon by the learned single Judge provides that where any dealer knowingly produces a false bill, vouchers, declaration, certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him is not liable to be taxed or liable to be taxed at a lower rate, the assessing authority shall on detecting such production direct the dealer producing such document to pay as penalty a sum mentioned in that Section. It is not the case of the Revenue that the seller has produced a false bill, vouchers, declaration, certificate or other document with a view to

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support or makes any claim that the transaction is not liable to be taxed or liable to be taxed at a lower rate. We fail to appreciate as to how Section 10(3) of the Act would be applicable to the facts of the present case. In fact, the assessing officer has referred to Section 12(3)(b) of the Act while imposing penalty and there is no reference to Section 10(3) of the Act. In the circumstances, it is impossible to agree with the view of the learned single Judge that the law laid down by this Court in State of Tamil Nadu v. Madras Petro Chem Ltd., (cited supra) and State of Tamil Nadu v. Seema Udyog (cited supra) is no longer good law.

12. Lastly, we shall deal with the plea regarding alternative remedy as raised by the Revenue. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. In *Harbanslal Sahnia v. Indian Oil Corporation Ltd., (2003) 2 SCC 107*, the Supreme Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In a recent judgment in *State of H.P v. Gujarat Ambuja Cement Ltd., (2005 Vol.142 STC page 1)*, a three Judge Bench of the Supreme Court after an exhaustive consideration of the earlier decisions held as follows: - (paras. 23 & 24 at p.20)

> "That being the position, we do not consider the High Court's judgment to be vulnerable on the ground that alternative remedy was not availed. There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.
>
> 24.Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing

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> authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained. But normally the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute"

13. In the instant case, the issue involved is covered by several judgments of this Court and the Supreme Court, and it has been consistently held that for the contravention of condition of Form XVII, tax and penalty could be imposed only against the purchasing dealer and not against the seller, as per Section 3(3) of the Act. Therefore, the impugned order of the assessing authority is clearly without jurisdiction.

14. In the result, it is not possible to sustain the order passed by the learned single Judge and the same is hereby set aside. The writ petition as well as the writ appeal stands allowed with no order as to costs. Consequently, M.P.No.1 of 2006 is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

Vu/pv

Copy to:

The Commercial Tax Officer,
Dr.Nanjappa Road Circle,
Coimbatore.

+1cc to Ms. R.Hemalatha, Advocate Sr 47695

+1cc to the Spl. Govt. Pleader (T) Sr 48093

JRG (CO)

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